IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,
Plaintiff-Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 20, UNITED MINE WORKERS OF AMERICA, and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Defendants-Respondents.

REPLY BRIEF OF PETITIONER

In Support of Its Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

We have read the Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Their contention that there is no conflict among the Circuits on the question presented for review herein is clearly insubstantial. Their contention that the interlocutory character of the injunction herein somehow makes the case unsuitable for review by this Court appears to make much ado about nothing in the present context, in view of the

fact that *Boys Markets* itself, 398 U.S. 235 (1970), also arose upon an interlocutory injunction. Consequently, we believe no detailed reply is necessary, and that it suffices to call this Court's attention to the Opinion Sur Petition for Rehearing in Banc and Order of the United States Court of Appeals for the Third Circuit, in *United States Steel Corporation v. United Mine Workers of America, et al.*, — F. 2d — (May 20, 1976), denying rehearing in the case reported at 91 LRRM 3031, 78 LC ¶ 11,347 (March 19, 1976):

> "*Opinion Sur Petition for Rehearing in Banc*
>
> "Present: Seitz, *Chief Judge*, Van Dusen, Aldisert, Adams, Gibbons, Rosenn, Hunter, Weis and Garth, *Circuit Judges*
>
> "For Publication
>
> "(Filed May 20, 1976)
>
> "Per Curiam
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> "We have before us a petition by the defendant unions for rehearing in banc. The issues involved in this case are exceptionally important and controversial. On some of them the panel members divided three ways, and the several courts of appeals which have considered these issues have divided at least three ways as well.[1] Clearly, the subject matter is such that in banc consideration ordinarily would be appropriate. Whatever this court sitting in banc decided, however, the difference among the circuits would remain with respect to the application of the federal law of labor arbitration to the same national labor contract. Only the Supreme Court is in position to resolve this con-

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[1] *See, e.g., United States Steel Corp. v. United Mine Workers of America*, 519 F. 2d 1236 (5th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3626 (U.S. April 26, 1976) (No. 75-1562); *CF&I Steel Corp. v. United Mine Workers of America*, 507 F. 2d 170 (10th Cir. 1974); *Old Ben Coal Corp. v. Local 1487, UMW*, 500 F. 2d 950 (7th Cir. 1974).

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flict. A petition for certiorari has already been filed seeking review of the decision of the Fifth Circuit in *United States Steel Corp. v. United Mine Workers of America*, 519 F. 2d 1236 (5th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3626 (U.S. April 26, 1976) (No. 75-1562). If certiorari should be granted in that case, the Supreme Court should be in a position to simultaneously consider this case involving the same collective bargaining agreement. Rehearing in banc might prevent and certainly would delay such consideration. The issue of injunctive relief with respect to future violations of implied no strike agreements is of such importance that we prefer to take no step that might delay a petition for certiorari.

"The petition for rehearing in banc will be denied."

* * * * * * * *

"Sur Petition for Rehearing

"Present: Seitz, *Chief Judge*, Van Dusen, Aldisert, Adams, Gibbons, Rosenn, Hunter, Weis and Garth, *Circuit Judges*

"The petition for rehearing filed by Appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied."

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CONCLUSION

The writ of certiorari should be granted to review the "exceptionally important and controversial" question presented in the instant case, and to resolve the conflict among the Circuits on that question.

Respectfully submitted

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Certificate of Service

I hereby certify that I have served a copy of the foregoing Reply Brief on each of the following by mailing a copy to each by U. S. Mail, properly addressed, postage prepaid on this the 31st day of May, 1976:

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